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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,353	12/18/2001	Victor I. Deonarine	ITW7510.008	3939

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EXAMINER	
DEJESUS, LYDIA M	
ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/683,353	DEONARINE, VICTOR I.	
	Examiner	Art Unit	
	Lydia M. De Jesús	2859	

-- The MAILING DATE of this communication appears on the cover sh t with the corr spond nce addr ss --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Information Disclosure Statement

2. Upon review of Applicant's remarks identifying the information disclosure statement submitted on February 11, 2003 as a copy of Paper No. 2 filed on >***March 14, 2002***< (certificate of correspondence dated >***March 14, 2002***<), the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office.

As stated in the Office Action mailed on December 20, 2002, the references listed in said information disclosure statement filed on March 22, 2002 as Paper No. 2 have already been considered.

Claim Objections

3. Claim 7 is objected to because of the following informalities: There is insufficient antecedent basis for the limitation "the ridges of the curved ends of the longitudinal member" recited in said claim. It appears that said limitation is intended to refer to the hooks of the curved ends of the longitudinal member. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-8 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by OMEGAMARKER® Temperature Test Kit [hereinafter OMEGAMARKER®[1]].

OMEGAMARKER® discloses a dual temperature indicator stick assembly comprising: a first indicator stick housing positioned along a first axis and configured to hold a compound which melts at a first given temperature i.e., indicator for 125°F; a second indicator stick housing positioned along a second axis and configured to hold a compound which melts at a second given temperature i.e., indicator for 150°F; and a one-piece connector physically connecting the first and second indicator stick housings along different axes, the connector being the container case in which the indicator sticks are contained in a side-by-side relationship.

The OMEGAMARKER® also includes in the connector/container case ribs for holding the indicator sticks in position, each of said ribs considered to be longitudinal member having curved ends with hooks configured to secure the first and second indicator stick housings to the connector/container case and to prevent rotation of the first and second indicator stick housings. The curved ends have a curved section on each side to said first and second indicator stick housings. The first and second indicator stick housings have an exterior surface having a groove therein for engaging the hooks of the curved ends of the longitudinal member, in this case the crayon holders include a surface with ribs that engage with the hooks at the ends of the longitudinal members/ribs in the connector/container case. It appears that said

[1] A color image of the OMEGAMARKER® Temperature Test Kit can be found in the following website <http://www.omega.com/ppt/pptsc_lg.asp?ref=OMEGAMARKER&Nav=tcmf05>>

connector/container case is configured to snap fit the first and second indicator stick housings to the connector/container case.

With respect to claims 16-20: OMEGAMARKER® discloses a dual temperature indicator stick apparatus comprising first means for indicating a first temperature i.e., indicator for 125°F; a second means for indicating a second temperature i.e., indicator for 150°F; and means for retaining the first means to the second means in a side-by-side relationship to form an indicator stick assembly capable of indicating at least two temperatures, in this case a container case.

Said apparatus further comprises means for controlling movement of the first and second means, in this case the ribs retaining the means for indicating inside the container case. Said first and second means for indicating comprise a first indicator stick and a second indicator stick and the mean for retaining the first means to the second means comprises a pair of tubular members, in this case the tubular spaces for receiving the indicator sticks, secured together by a connector, in this case the container case. Said connector/container case includes a plurality of longitudinal members i.e., ribs formed in the container case/connector, having curved ends integrally molded to each of the tubular members.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over OMEGAMARKER® in view of Tabachnik [U.S. Patent 4,468,146].

With respect to claim 2: OMEGAMARKER® discloses an assembly as claimed, as stated above in paragraph 5, but fails to disclose a pair of resistance mechanisms attached to one of said first and second indicator housings to limit rotational movement of the first and second indicator sticks, a pair of collets having threads, each collet rotatably coupled to one of the first and second indicator housings, and wherein each of the pair of collets is configured to engage separate indicator sticks upon rotation of a collet about one of the first and second axis.

Tabachnik shows a crayon holder including a pair of resistance mechanisms [46] to limit rotational movement of the crayon held by said holder, a collet [38] rotatably coupled to the housing, said collet having threads [42], and wherein said collet is configured to engage the crayon upon rotation of the collet about the axis of the holder housing.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first and second indicator stick housings of the OMEGAMARKER® to each include a pair of resistance mechanisms [46] to limit rotational movement of the corresponding indicator stick, a collet [38] rotatably coupled to the housing, said collet having threads [42], and wherein said collet is configured to engage a corresponding indicator stick upon rotation of the collet about the axis of the housing, as taught by Tabachnik, in order to control the length of protrusion of the indicator stick without contacting the indicator stick and thereby avoid contamination the indicator stick material.

With respect to claims 10-15: The combination of OMEGAMARKER® and Tabachnik, discussed above, results in a dual temperature stick holder comprising a connector assembly

adapted to and position at least two temperature indicator sticks in a side-by-side relationship; a pair of advancement mechanisms configured to extend the two temperature indicator sticks from the connector assembly; and wherein each of the pair of advancement mechanisms engages a respective temperature indicator stick upon rotation of a respective advancement mechanism. Said connector assembly includes a first housing element i.e., stick holder for 125° F indicator, connected to a second element i.e., stick holder for a 150°F indicator, each of the first and second housing elements/indicator stick holders having a single advancement mechanism secured thereto and capable of holding a temperature indicator stick therein. The assembly further includes a pair of resistance mechanisms attached to one of the first and second housing elements to limit rotational movement of the two temperature indicator sticks. The connector assembly further includes a clamp formed by rib elements engaging each indicator stick housing element in the container case connector of OMEGAMARKER® aligning the two temperature indicator stick housing elements, said clamp having a longitudinal member/rib element having curved ends, the curved ends configured to slidingly secure the two indicator stick housing elements in a side-by-side relationship and wherein the first and second housing elements each has a groove on an outer surface to engage the end of said clamp and preventing rotation of the first and second housing elements.

8. Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over OMEGAMARKER® in view of Kirk [U.S. Patent 3,564,668].

OMEGAMARKER® discloses a dual temperature indicator stick assembly comprising: a first indicator stick housing positioned along a first axis and configured to hold a compound which melts at a first given temperature i.e., indicator for 125°F; a second indicator stick housing

positioned along a second axis and configured to hold a compound which melts at a second given temperature i.e., indicator for 150°F; and a one-piece connector physically connecting the first and second indicator stick housings along different axes, the connector being the container case in which the indicator sticks are contained in a side-by-side relationship.

However, OMEGAMARKER® fails to disclose said connector including a clip member configured to permit attachment of the dual temperature indicator stick assembly.

Kirk shows a one-piece holder for pencils, pen or the like including a clip member [10 +11] to permit attachment of the connector to an object, in this case a book.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add to the assembly of OMEGAMARKER®, a one-piece connector for holding the temperature indicator stick housings and permitting attachment to an object, such as a book or sun visor, as suggested by Kirk, in order to provide a portable connector structure to transport only the indicator sticks relevant to a particular test site without exposing the remaining indicator sticks in the OMEGAMARKER® kit to the test environment.

Allowable Subject Matter

9. The indicated allowability of claims 2, 4,7-8 and 12-13 is withdrawn in view of the newly discovered reference(s) to Tabachnik. Rejections based on the newly cited reference(s) have been presented in the above paragraphs.

Response to Arguments

10. Applicant's arguments filed August 21, 2003 have been fully considered but they are not persuasive. Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lydia M. De Jesús whose telephone number is (703) 306-5982. The examiner can normally be reached on 7:30 to 4:00 p.m., Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Diego F.F. Gutierrez
Supervisory Patent Examiner
Technology Center 2800

LDJ
October 20, 2003